THE HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE MR. JUSTICE S. ANANDA REDDY

WRIT PETITION NOS. 18552 AND 18561 OF 2001

DATED: 19-09-2005

Between

The Western India Plywoods Ltd.,
(H.O Baliapatnam, Kannanore Dist),
Kerala State, Hyderabad Sales Dept,
Rep. by its Depot Manager,
C.G. Mohan, S/o late C.D. Gangadhar,
5-9-673 & 674, Gunfoundry,
Hyderabad – 1.

..... PETITIONER

And

1. State of A.P. rep. by its Secretary,
Revenue (Commercial Taxes Dept),
A.P Secretariat, Hyderabad and
another.

..... RESPONDENTS

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COMMON ORDER: (per Sri B. Sudershan Reddy, J)

Both the writ petitions are being disposed of by this common order since the question that arises for our consideration in both the writ petitions is one and same.

The petitioner invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to issue an appropriate writ and quash the impugned proceedings GIR No. 35012/94-95 CST, dated 23-07-2001 which is in the nature of show cause notice requiring the petitioner to explain as to why the turnover of Rs.70,32,000/- should not be subjected to levy of tax at 10% being interstate sales not covered by C forms and further notice of even date proposing the petitioner to explain as to why the penalty as required under Section 10 of the Central Sales Tax Act, 196 (for short 'the CST Act') should not be levied on the petitioner.

The petitioner is a joint stock company incorporated under the provisions of the Companies Act, 1936 having its registered office at Balipatnam, Cannanore, Kerala. It has branches and sale depots spread over India including the one at Hyderabad. The petitioner – dealer is engaged in business of manufacture and sale of all kinds of plywood hardboards, soft boards, laminated densified wood and furniture etc. It is registered both under the provisions of the Andhra Pradesh General Sales Tax Act, 1957 (for short 'the APGST Act') as well as the CST Act, in the year 1963 at Hyderabad.

That for the assessment year 1994-95, both the assessments under the APGST Act and the CST Act were assessed and concluded in the year 1995 itself and the competent authority passed orders on 10-10-1995 under the provisions of the APGST Act and on 21-10-1995 under the provisions of the CST Act. The orders were served on the petitioner – dealer on 20-10-1995 and 27-10-1995 respectively determining the net turnover at Rs.3,88,05,614/- with tax thereon of Rs.42,86,838/- and served refund order on the assessee for Rs.7,053/- after adjusting the tax due from the tax already paid under the provisions of both the APGST Act and the CST Act. That accordingly a net turnover of Rs.2,04,478/- with tax payable thereon at Rs.23,872/- was determined after adjusting the tax already paid.

That while the matter stood thus, a revised show cause notice was served on the petitioner on 27-10-1995 for the assessment year 1994-95 under the provisions of the CST Act seeking revision of the assessment already completed for the assessment year 1994-95 as early as on 21-10-1995. In the said show cause notice, it is inter alia alleged that some discrepancies in F-Forms resulting difference in stock transfer accounts etc., ere noticed and, therefore, the petitioner was required to show cause to the proposed action to levy tax at 10% on the turnover of Rs.70,32,000/-, which according to the show cause notice is on account of the discrepancy in the return submitted by the petitioner.

The simple question raised by the petitioner in the instant writ petitions is that the proposed action is barred under Section 14(4) of the APGST Act. The impugned show cause notices proposing to levy tax as well as penalty suffer from inherent lack

of jurisdiction inasmuch as they are barred by limitation *ex facie*.

Learned counsel for the petitioner relying on Section 14(4) of the APGST Act submits that the petitioner is not required to subject itself to the jurisdiction of the respondents and submit the explanation to the proposed action since the proceedings suffer from inherent lack of jurisdiction.

In order to examine the contention, we are required to notice Section 14(4) of the APGST Act which reads as follows:

> "In any of the following events, namely, where the whole or any part of the turnover of a business of a dealer has escaped assessment to tax, or has been under-assessed or assessed at a rate lower than the correct rate, or where the licence fee or registration fee has escaped levy or has been levied at a rate lower than the correct rate, the assessing authority may, after issuing a notice to the dealer, and after making such enquiry as he may consider necessary, by order, setting out the grounds therefore—
>
> a. determine to the best of his judgment the turnover that has escaped assessment and assess the turnover so determined;
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> b. assess the correct amount of tax payable on the turnover that has been under-assessed;
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> c. assess at the correct rate the turnover that has been assessed at a lower rate;
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> ac. assess the correct amount of tax payable, in a case where any deduction or exemption has been wrongly allowed;
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> d. levy the licence fee after determining to the best of his judgment the turnover on which such fee is payable;
>
> e. levy the registration fee that has escaped levy;
>
> f. levy the correct amount of licence fee or registration fee in a case where such fee has been levied at a rate lower than the correct rate.
>
> In addition to the tax assessed or fee levied under this sub-section, the assessing authority may also direct the dealer to pay

a penalty as specified in sub-section (8)".

It is also required to notice sub-section (4-A) of Section 14 of the APGST Act which reads as under:

> "Any assessment or levy under sub-section (4) shall be made within a period of four years from the date on which any order of assessment or levy was served on the dealer".

That a combined reading of the provisions referred to hereinabove would make it abundantly clear that the assessing authority after issuing a notice to the dealer, and after making such enquiry as it may consider necessary, by order, assess the correct amount of tax payable on the turnover that has been under-assessed; assess at the correct rate the turnover that has been assessed at a lower rate; assess the correct amount of tax payable, in a case where any deduction or exemption has been wrongly allowed and in addition to the tax assessed, may also direct the dealer to pay a penalty only in cases where the whole or any part of the turnover of a business of a dealer has escaped assessment or has been under assessed or assessed at a rate lower than the correct rate. But such an order can be passed only within a period of four years from the date on which any order of assessment or levy was served on the dealer. It is not as if the power under sub-section (4) of Section 14 of the APGST Act can be exercised by the authority at its sweet will and pleasure. The power can be exercised only on the stated grounds and within a period of four years from the date on which any order of assessment was served on the dealer. Admittedly the orders were served on the petitioner on 20-10-1995 and 27-10-1995 respectively but whereas the impugned show cause notices are dated 23-07-2001 almost after a period of more than five and half years. In the circumstances, we find no option except to quash and set aside the impugned show cause notices which are *ex facie* barred by limitation. We find substance in the submission made by the learned counsel for the petitioner. The impugned notices are accordingly quashed.

The writ petitions are accordingly allowed without any order as to costs.

(B. Sudershan Reddy, J)

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(S. Ananda Reddy, J)

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